

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHWESTERN DIVISION**

Kendrick Smith,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.
	)	
Persolve, LLC, d/b/a Account Resolution	)	
Associates, a Delaware limited liability	)	
company,	)	
	)	
Defendant.	)	<u>Jury Demanded</u>

**COMPLAINT**

Plaintiff, Kendrick Smith, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a finding that Defendant's collection actions violated the FDCPA, and to recover damages, and alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction, pursuant to § 1692k(d) of the FDCPA and 28 U.S.C. § 1331.
2. Venue is proper in this District because: a) the acts and transactions occurred here; b) Plaintiff resides here; and, c) Defendant transacts business here.

**PARTIES**

3. Plaintiff, Kendrick Smith ("Smith"), is a citizen of the State of Alabama, residing in the Northern District of Alabama, from whom Defendant attempted to collect defaulted consumer debts that he allegedly owed for Compass Bank accounts.
4. Defendant, Persolve, LLC, d/b/a Account Resolution Associates ("Persolve"), is a Delaware limited liability company that acts as a debt collector, as

defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, defaulted consumer debts that it did not originate. Persolve operates a defaulted debt collection business, and attempts to collect debts from consumers in many states, including consumers in the State of Alabama. In fact, Defendant Persolve was acting as a debt collector as to the defaulted consumer debts it attempted to collect from Plaintiff.

5. Defendant Persolve is authorized to conduct business in the State of Alabama and maintains a registered agent here, see, record from the Alabama Secretary of State, attached as Exhibit A. In fact, Defendant Persolve conducts business in Alabama.

### **FACTUAL ALLEGATIONS**

6. Due to financial difficulties, Plaintiff was unable to pay his debts, including consumer debts he allegedly owed to Compass Bank. Defendant Persolve attempted to collect these debts from him via negative credit reports. Unsure of the debts and unsure about Persolve, Mr. Smith consulted with counsel about his debt issues and the debts that Persolve was trying to collect.

7. Accordingly, Mr. Smith's attorney wrote to Defendant Persolve, via a letter dated June 10, 2020, to dispute the debts that Persolve was trying to collect. A copy of this letter and fax confirmation are attached as Exhibit B.

8. On August 11, 2020, Mr. Smith obtained and reviewed a copy of his Experian credit report, which showed that Defendant Persolve had continued to report the debts he allegedly owed for the Compass Bank accounts, but had failed to note that the debts were disputed. The pertinent part of Mr. Smith's Experian credit report is

attached as Exhibit C.

9. Defendant's violations of the FDCPA were material because Defendant's failure to note that the debts were disputed when Defendant reported, or continued to report, the debts on Plaintiff's credit report impaired his credit rating and his ability to obtain credit. Moreover, Defendant's failure to note, when reporting the debts on Plaintiff's credit report, that they were disputed, made it appear to Plaintiff that he did not actually have the right to dispute the debts. Defendant's collection actions alarmed, confused and distressed Mr. Smith and impacted his credit score.

10. All of Defendant's collection actions at issue in this matter occurred within one year of the date of this Complaint.

11. Defendant's collection communications are to be interpreted under the "least sophisticated consumer" standard, see, Jeter v. Credit Bureau, 760 F.2d 1168, 1176 (11th Cir. 1985); LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1193-1194 (11th Cir. 2010).

**COUNT I**  
**Violation Of § 1692e Of The FDCPA –**  
**False or Misleading Representations**

12. Plaintiff adopts and realleges ¶¶ 1-11.

13. Section 1692e of the FDCPA prohibits debt collectors from using any false, deceptive or misleading means to collect or attempt to collect a debt, including, but not limited to, communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed, see 15 U.S.C. § 1692e(8) ("...the following conduct is a violation of this section...including the failure to communicate that

a disputed debt is disputed..."); see also, Evans v. Portfolio Associates, 889 F.3d 337, 346 (7th Cir. 2018); Sayles v. Advanced Recovery Systems, 865 F.3d 246, 249-250 (5th Cir. 2017); and Brady v. Credit Recovery, 160 F.3d 64, 65 (1st Cir. 1998).

14. Defendant, by continuing to report the debts to a credit reporting agency, when it knew the debts were disputed by Plaintiff, and by failing to report that the debts were disputed, used false, deceptive or misleading means to collect or attempt to collect debts, in violation of § 1692e(8) of the FDCPA.

15. Defendant's violations of § 1692e(8) of the FDCPA render it liable for actual and statutory damages, costs, and reasonable attorneys' fees, see, 15 U.S.C. § 1692k.

**COUNT II**  
**Violation Of § 1692f Of The FDCPA --**  
**Unfair Or Unconscionable Collection Actions**

16. Plaintiff adopts and realleges ¶¶ 1-11.

17. Section 1692f of the FDCPA prohibits a debt collector from using any unfair or unconscionable means to collect or attempt to collect a debt, see, 15 U.S.C. § 1692f.

18. Defendant, by continuing to report the debts to a credit reporting agency, when it knew the debts were disputed by Plaintiff, and by failing to report that the debts were disputed, used unfair or unconscionable means to collect, or attempt to collect, debts, in violation of § 1692f of the FDCPA.

19. Defendant's violations of § 1692f of the FDCPA render it liable for actual and statutory damages, costs, and reasonable attorneys' fees, see, 15 U.S.C. § 1692k.

### **PRAYER FOR RELIEF**

Plaintiff, Kendrick Smith, prays that this Court:

1. Find that Defendant's collection practices violate the FDCPA;
2. Enter judgment in favor of Plaintiff Smith, and against Defendant, for actual and statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,
3. Grant such further relief as deemed just.

### **JURY DEMAND**

Plaintiff, Kendrick Smith, demands trial by jury.

By: /s/ David J. Philipps  
One of Plaintiff's Attorneys

By: /s/ Ronald C. Sykstus  
One of Plaintiff's Attorneys

Dated: August 19, 2020

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